Supreme Court, U.S.
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No. 94-944

# In the Supreme Court of the United States

OCTOBER TERM, 1994

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

*v.*

JOHN A. AND MARY B. SCHMITZ, RESPONDENTS

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

*v.*

HOWARD H. AND MARIANNE KELLER, RESPONDENTS

UNITED STATES OF AMERICA, PETITIONER

*v.*

MICHAEL L. AND BILLIE M. RICE, RESPONDENTS

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

## BRIEF FOR RESPONDENTS IN OPPOSITION

DOUGLAS B. ALLEN
G. EDWARD DIENER
BURNETT, BURNETT & ALLEN
333 W. Santa Clara St.
Suite 1000
San Jose, CA 95113
(408) 298-6540

*Attorneys for Respondents Michael L. and Billie M. Rice*

## QUESTION PRESENTED

Whether back pay and liquidated damages received in settlement of litigation under the Age Discrimination in Employment Act are excluded from gross income under Section 104 (a) (2) of the Internal Revenue Code as "damages received . . . on account of personal injuries or sickness" (26 U.S.C. 104 (a) (2)).

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### PRELIMINARY STATEMENT

This Brief in Opposition is submitted on behalf of respondents Michael L. and Billie M. Rice. The Schmitzs and the Kellers are represented by the same counsel as the taxpayers in *Commissioner v. Schleier*, No. 94-500.

Petitioner has in its Petition for a Writ of Certiorari erroneously named the Commissioner of Internal Revenue as a party in the Rice case. Because the Rices paid their taxes in question and sought a refund, the correct party, as reflected in the courts below, is the United States of America.

## CONCLUSION

Mr. and Mrs. Rice agree with the counter-statement of the case presented by the Schmitzs and Kellers. Further, the Rices agree that, without waiving any of the arguments presented or to be presented by the taxpayers in No. 94-500, *Schleier*, they are unaware of any basis for granting certiorari in that case and denying it in their case.

The Rices agree that the petition in their case should be held and disposed of as appropriate in light of the Court's disposition of *Schleier*.

Respectfully submitted,

DOUGLAS B. ALLEN
G. EDWARD DIENER
BURNETT, BURNETT & ALLEN
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Suite 1000
San Jose, CA 95113
(408) 298-6540

*Attorneys for Respondents*
*Michael L. and Billie M. Rice*